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Opinion

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Concord

December 31, 1975

Mr. Frank E. Whaland, Commissioner
Department of Health and Welfare
8 Loudon Road
Concord, New Hampshire 03301

Dear Commissioner Whaland:

I have investigated the matter concerning the recently passed RSA 167:7-a (Supp. 1975), which was the subject of your November 6, 1975, letter to me. This statute provides that the amount of the State's assistance to the aged, needy blind, and permanently and totally disabled shall not be decreased because of increases in certain benefits accruing to individuals in these groups. The scope of the statute is quite broad, excluding from consideration increments in and from any federal agency or under the Social Security Act and any public or private gifts which would otherwise have been deemed income.

It appears that the implementation of RSA 167:7-a (Supp. 1975) as reflected in your SR 75-205, has become a target of criticism from certain federal officials. As I read it, the essential complaint (which appears more precisely in the September 23, 1975, letter from Mr. Fallon to Mr. Hooker) seems to be that the SR 75-205 disregard of income applies only to income derived from social security benefits. This practice is alleged to be both inequitable and unreasonable and thus in conflict with the federal regulations. Moreover, it appears that the State has failed to file an amendment reflecting the indicated change in policy and State law and so now stands in violation of 45 C.F.R. §205.5(a).

Although I question the necessity of taking positive action in response to a federal advisory which is admittedly informal, some steps ought at least to be taken to bring the State into compliance with the federal regulations regarding policy amendments. Recognizing potential federal difficulties should the State's current position be maintained, I recommend the following action:

Mr. Frank E. Whaland, Commissioner
Page Two
December 31, 1975

1. As per the second alternative suggestion of Mr. Fallon, indicated in the third paragraph of his September 23 letter, establish a plan providing for equivalent disregard to apply to all types of income. Such a plan would provide that upon an increase in benefits of the sort contemplated by RSA 167:7-a (Supp. 1975) the beneficial effect of the disregard of that increase should be extended equally to all recipients of aid in the group, regardless of the nature of their individual incomes and regardless of the fact that they are not currently receiving any benefits under the program that is being increased.

This would permit disregard in the same manner as that contemplated by the Legislature in its statutory enactment. It might, in some circumstances, necessitate broader coverage than that authorized under the statute, but it would nonetheless follow the strict letter of the law.

2. File an amendment to the Title XIX plan reflecting this change.

This would effect compliance with the applicable federal regulations, and would necessitate a formal opinion from the federal government should the plan be unacceptable.

It must be understood that these suggestions are intended to effect an equitable compromise between State and federal law only until the alleged discrepancies in them have been more clearly defined and brought to the attention of the Legislature for further action.

Sincerely,



Warren B. Rudman
Attorney General